IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3719 of 2007()

L.P. 219/04 OF J.F.CM. COURT IV, KOZHIKODE

PETITIONER - ACCUSED

SHANAVAS BABU, SHANAVAS MANZIL,
PUTHIYANGADI, KOZHIKODE.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3719 of 2007

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Dated this the 20th day of June, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 427 r/w. 149 I.P.C. All the offences shown in the petition are bailable. But as the petitioner did not appear before the learned Magistrate, a non-bailable warrant was issued after cognizance was taken. The petitioner finds a non-bailable warrant of arrest chasing him. According to the petitioner he had no knowledge about the pendency of the proceedings earlier. That is why he could not appear before the learned Magistrate. Directions under Section 438 Cr.P.C. may in these circumstances be issued to save the petitioner from the undeserved trauma of arrest and incarceration, it is prayed.

2. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-

bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on

merits, in accordance with law and expeditiously - on the date of surrender itself.

5. Hand over the order.

(R. BASANT)
Judge

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